

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

COREY DAY, JUAN EVORA, et al.

v.

C.A. NO. 08-94 ML

ASHBEL T. WALL, et al.

REPORT AND RECOMMENDATION

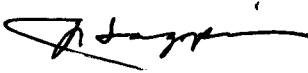
Jacob Hagopian, Senior United States Magistrate Judge

Plaintiffs, *pro se*, are 13 current or former inmates in the custody of the Rhode Island Department of Corrections in Cranston, Rhode Island. They filed a complaint on or about March 13, 2008 alleging that they are Muslims and the named defendants are violating their civil rights by actions including: (i) refusing to serve meals in accordance with the dictates of Islam; (ii) obstructing the performance of their daily prayer; (iii) harassing them because they are Muslim; and (iv) prohibiting them from wearing skull caps as required by Islam (the “Original Complaint”) (Docket # 1). On or about June 4, 2008, plaintiffs filed an amended complaint, reiterating their original claims and adding claims that defendants violated a consent decree as well as a number of internal departmental policies (the “Amended Complaint”) (Docket # 12).

Presently before the Court is a Motion to Dismiss the Original Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (the “Federal Rules”) for failure to state a claim upon which relief may be granted filed by defendants on August 21, 2008 (Docket # 20). Plaintiffs have objected to defendants’ motion (Docket # 26). This matter has been referred to me for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons that follow, I recommend that the Motion to Dismiss be DENIED.

The present Motion to Dismiss seeks dismissal of the Original Complaint. However, as plaintiffs' filed the Amended Complaint, the Original Complaint has been superseded and no longer performs any function in this case.¹ See *Kolling v. American Power Conversion Corp.*, 347 F.3d 11, 16 (1st Cir. 2003). Accordingly, defendants' Motion to Dismiss the Original Complaint is moot, and I therefore recommend that the motion be DENIED.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten days of its receipt. Fed.R.Civ.P. 72(b); LR Cv 72(d). Failure to file timely, specific objections to this report constitutes waiver of both the right to review by the district court and the right to appeal the district court's decision. *United States v. Valencia-Copete*, 792 F.2d 4 (1st Cir. 1986) (*per curiam*); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980).



Jacob Hagopian
Senior United States Magistrate Judge
March 10, 2009

¹Defendants' recognized their oversight, and subsequently filed a Motion to Dismiss the Amended Complaint pursuant to Federal Rule 12(b)(6) (Docket # 31). Defendants' Motion to Dismiss the Amended Complaint is currently under advisement.